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**From:** Stefanie Wilson <stefaniew@mercyforanimals.org>  
**Sent:** Wednesday, May 10, 2017 6:26 PM  
**To:** FOIA HQ  
**Subject:** Follow up on FOIA request  
**Attachments:** FOIA CAFO collected data .pdf

Hello,  
I am requesting a status update on the attached FOIA request, submitted on April 25, 2017. I have not received confirmation from the EPA FOIA officer regarding this request.

Sincerely,

**Stefanie Wilson**  
Staff Attorney  
I Identify As: She/Her/Hers  
☎ 510-926-2813

MERCY FOR  
 ANIMALS



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8033 Sunset Blvd, Ste 864  
Los Angeles, CA 90046

866.632.6446  
MercyForAnimals.org

April 25, 2017

**Via email:** [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

Freedom of Information Act Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

**RE: FOIA Request—EPA Collected CAFO Data**

Dear FOIA Officer:

This is a request for public records made by Mercy For Animals (MFA), pursuant to the Federal Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq. This request satisfies the written request requirement. If this office is not the appropriate place for this request, please forward the request to the correct office or individual, and inform us when doing so.

(1) MFA requests that you please provide:

- Any and all records obtained by EPA from state and federal agencies (including information reported directly to EPA), and any other existing sources, pertaining to animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs), including but not limited to:
  - Permit applications pursuant to National Pollutant Discharge Elimination System (NPDES);
  - Inspection and/or enforcement reports pursuant to NPDES;
  - Permit applications pursuant to any other state permitting programs applicable to AFOs/CAFOs;
  - Inspection and/or enforcement reports pursuant to any other state permitting programs applicable to AFOs/CAFOs;
  - Records, reports, files relevant to administration and enforcement of Clean Water Act programs as applied to AFOs/CAFOs;
  - If none of the above records exists for a state, then any documents or records obtained and/or created by EPA to determine whether the state requires animal feeding operations to obtain permits.
- The above information is requested for the **following states only: Iowa, Georgia, California, North Carolina, Oklahoma, and Kansas.**
- The above information is requested from January 1, 2015 to the date this request is received.

(2) In addition, MFA requests that you please provide the document, "*Locating Livestock: How Water Pollution Control Efforts Can Use Information From State Regulatory Programs*" (IE: EPA-HQ-OW-2011-0133-0003) which is listed on [regulations.gov](http://regulations.gov) docket ID # EPA-HQ-OW-2011-0188, but is currently no longer available to download from the docket.

As used in this request, the term "records" refers to the documents described above but also includes any relevant webinars, reports, studies, powerpoint presentations, correspondence (including recorded messages), memoranda, meeting notes and minutes, drafts and working papers, notes and summaries of

conversations and interviews, electronic mail messages (emails), audit reports, contracts, agreements, technical proposals, noncompliance reports, consumer complaints, third-party complaints (e.g. complaints from the general public or employees within the agency), presentations, graphic material, photographs, video, and any other form of written, electronic, or recorded information.

To the extent that records responsive to this request are available in a widely-used electronic format (e.g., pdf, Excel, Word, or WordPerfect files), we would prefer to receive them in that format, provided that the electronic versions are in comprehensible form.

If you regard any of the requested records to be exempt from required disclosure under FOIA, we request that you disclose them nevertheless, as such disclosure would serve the public interest of educating citizens and advancing the purposes of the Clean Water Act.

In the event that you regard any requested records to be exempt and determine not to disclose them (or portions of them), we request that you provide an itemized index which describes each withheld record (or portion) and provides the date of the record, the form of the record, the location of the record, the disclosure exemption that you believe applies and your rationale, and whether any reasonably segregable information has been disclosed.

We also request that responsive records be released as soon as they are available, but in no event later than 20 days as required by law. To the extent that some subset of the requested records is readily available and can be provided immediately, please send it immediately while EPA searches for other records.

#### **Request for Fee Waiver**

MFA is a nonprofit organization dedicated to preventing cruelty to farmed animals and promoting compassionate food choices and policies. As a 501(c)(3) nonprofit organization, Mercy For Animals does not have a commercial, trade, or profit interest in the information requested, and thus is not requesting “trade secrets and commercial or financial information obtained from a person and privileged or confidential”, or any other information exempted pursuant to 5 U.S.C. § 552(b).

A waiver of search, review, and duplication fees is warranted here, because disclosure of the requested records meets the two-part public interest test in that “it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Both the legislative history and administrative and judicial interpretations of FOIA make clear that the “fee waiver provision is to be liberally construed in favor of waivers for non-commercial requesters.” *Schoenman v. F.B.I.*, 604 F. Supp. 2d 174, 192 (D.D.C. 2009) (*see also McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282 (9th Cir. 1987)).

The request at issue satisfies the legal requirements of a mandatory public interest fee waiver under both 5 U.S.C. § 552(a)(4)(A)(iii) and EPA’s implementation of the same set forth in 40 C.F.R. § 2.107. MFA has the ability to contribute to the public’s understanding of the operations of the government, specifically the agency’s activities relating to the oversight of discharge sources. MFA is particularly well suited to distribute information regarding this topic to concerned citizens and others on a national scale through its website, social media, newsletter, and e-newsletter.

Furthermore, the records are “meaningfully informative” of EPA’s ongoing oversight of CWA programs, and its implementation of its commitment to obtain CAFO information, which it agrees is necessary to improve oversight of CAFOs. *See* Withdrawal of Proposed Rule, NPDES CAFO Reporting Rule, 77 Fed. Reg. 42679 (July 20, 2012). Such information will allow better understanding of government operations, and, in particular, how it is responding to GAO Report 08-944, “Concentrated Animal Feeding Operations: EPA Needs More Information and A Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern” (Sept. 2008).

If, however, the waiver is denied and the request will involve more than two search hours or more than 100 pages of documents, and the fees will exceed twenty dollars (\$20.00), please notify us immediately by telephone before the request is processed, so we may decide whether to pay the additional fees or to appeal the denial of the request for waiver.

If you have any questions regarding this request, please contact Vandhana Bala at 312.909.6051 or [vandhanab@mercyforanimals.org](mailto:vandhanab@mercyforanimals.org).

The records and any related correspondence should be sent to:

Vandhana Bala  
c/o Mercy For Animals  
8033 Sunset Blvd., Ste 864  
Los Angeles, CA 90046

On behalf of Mercy For Animals, thank you very much for your time and attention.

Sincerely,



Vandhana Bala  
General Counsel  
Phone: (312) 909-6051  
E-mail: [VandhanaB@MercyForAnimals.org](mailto:VandhanaB@MercyForAnimals.org)